

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 05-393

5 Star Oil Co. Inc.,)
Appellant)
v.)
City of Boston,)
Appellee)

BOARD'S RULING ON APPEAL

Procedural History

This matter came before the State Building Code Appeals Board ("Board") on Appellant's appeal filed pursuant to 780 CMR §122.1. In accordance with 780 CMR §122.3, Appellant asks the Board to grant a variance from 780 CMR §110.1 of the Massachusetts State Building Code ("Code") with respect to the construction of a storage building.

By order dated January 3, 2007, Appellee notified Appellant that it had failed to obtain a building permit, in violation of 780 CMR §110.1, prior to constructing a structure attached to the left side of an existing building, and ordered Appellant to apply for and secure a building permit, and to remove the unpermitted structure forthwith.

In accordance with G. L. c. 30A, §§10 and 11; G. L. c. 143, §100; 801 CMR §1.02 et. seq.; and 780 CMR §122.3.4, the Board convened a public hearing on April 5, 2007 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Neither Appellant, nor his attorney, Paul Sever, who filed the appeal on Appellant's behalf was not present at the hearing. Michael Yanovitch, Building Inspector for Inspectional Services for the City of Boston, was present on behalf of the City as was Walter H. Porr., Jr., Assistant Corporation Counsel for the City.

Discussion

The issue is whether Appellant is required to obtain a building permit, under 780 CMR §110.1, before constructing a building that is attached to an existing building. As Appellee pointed out, 780 CMR §110.3 states that a building permit is **not** required if the building is a one story **detached** accessory building used as a storage shed. An accessory building is defined as "a

building, the occupancy of which is incidental to that of the main building, that is located on the same lot as the main building." 780 CMR §202.

The Board considered photographs of the building in issue that clearly show that it is not detached from the main building, and the letter Appellee presented in opposition to the Appeal.

The Board also concluded that Appellant was given notice of the hearing, and had opportunity to contact the Board if he or his counsel were unable to appear at the scheduled time of the hearing.

Decision

The Chair entertained a motion to deny the appeal ("Motion"). Following testimony, and based upon relevant information provided, Board members voted to deny the appeal, as described on the record. The Board voted as indicated below.

☐ Granted

☒ Denied

☐ Rendered Interpretation ☐

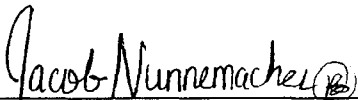
_____ Granted with conditions

☐ Dismissed

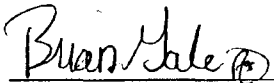
The vote was:

_____ Unanimous


..... ☒ Majority



Jacob Nunnemacher
(ABSTAINED)



Brian Gale - Chair

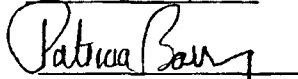


Stanley Shuman

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to a court of competent jurisdiction in accordance with Chapter 30A, Section 14 of the Massachusetts General Laws.

A complete administrative record is on file at the office of the Board of Building Regulations and Standards.

A true copy attest, dated: December 12, 2007



Patricia Barry, Clerk